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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION – LOS ANGELES**

NETGEAR, INC.,

Plaintiff,

vs.

HUAWEI TECHNOLOGIES CO.,
LTD.,

Defendant.

Case No. 2:24-cv-824 AB (AJRx)

**DEFENDANT HUAWEI
TECHNOLOGIES CO., LTD.'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR ORDER FOR
ALTERNATIVE SERVICE**

Date: 04/26/2024
Time: 10:00 a.m.
Place: 350 West First Street
Courtroom 7B
Los Angeles, CA 90012
Jud. Officer: Hon. Andre Birotte Jr.

I. INTRODUCTION

The Ninth Circuit requires that alternative service be *necessary* under the circumstances of a case. *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002). Alternative service is not necessary here. Netgear concedes it has never attempted service on Huawei – meaning Huawei is not evading service – and Huawei has voluntarily provided Netgear with a signed waiver of service form. *See* Ex. 1, 2 at 1.¹

Though Netgear’s opening brief represents that Netgear affirmatively “asked HUAWEI to waive service of the Complaint,” and that Huawei “refused.” Dkt. 39-1 at 2-3, Netgear has since backtracked: Netgear now admits that Netgear “*could have* requested that Huawei waive service of process, but Netgear chose not to and that request was never made.” Ex. 3 at 1 (written correspondence between the parties dated April 5, 2024, following the filing of Netgear’s motion) (emphasis by Netgear). Netgear’s admission underscores the obvious: Huawei cannot possibly have refused a request to waive service that Netgear now admits it never made. Netgear made a tactical decision not to request a waiver of service from Huawei – which Netgear at last acknowledges – yet told the Court it *did* seek such a waiver in order to try to get approval for alternative service. This alone warrants denial of Netgear’s motion. Compounding the problem, Netgear failed to attempt any other form of service on Huawei. Netgear’s opening brief makes clear that although it “apprised” certain individuals at Huawei about the complaint, Netgear did not attempt service of those individuals via any recognized means of service.

Netgear presumably did not want to ask for a waiver under Rule 4(d) so that it could leapfrog to a motion for alternative service and shorten the time for Huawei to file its responsive pleading to the Complaint. But Rule 4(f) was not designed to be used this way.

¹ All exhibits are attached to the Declaration of Kalpana Srinivasan, filed concurrently herewith, unless otherwise specified.

1 Shortly after being retained for this lawsuit, Huawei’s U.S. outside counsel
2 reached out to Netgear’s outside counsel to discuss its motion, including the
3 misstatement that Huawei had refused waiver, and communicated Huawei’s
4 willingness to waive service to avoid further burdening the Court. Netgear said it
5 wanted to continue pursuing its motion for alternative service. On April 1, Huawei’s
6 outside counsel supplied Netgear with a waiver of service, dated from March 27, the
7 day Huawei made its offer to waive service. *See* Ex. 1, 2 at 1. Netgear now claims
8 that because it never requested a waiver of service from Huawei – even though it told
9 the Court the opposite just weeks ago – Rule 4(d) does not apply. Ex. 3 at 1 (“[N]o
10 such request for waiver under Rule 4(d) was ever ‘sent’ by Netgear.”).

11 Netgear cannot (1) fail to attempt formal service, (2) fail to request a waiver
12 of service, and (3) jump to motion practice seeking court intervention when Huawei
13 has agreed to waive service and respond to the lawsuit in accordance with Rule 4(d).
14 Huawei does not seek to evade service; to the contrary, it has waived service here
15 pursuant to Rule 4(d) – as it has done many times in other cases – which provides it
16 90 days to respond. *See* Fed. R. Civ. P. 4(d)(3) (“A defendant who, before being
17 served with process, timely returns a waiver need not serve an answer to the
18 complaint until 60 days after the request was sent—or until 90 days after it was sent
19 to the defendant outside any judicial district of the United States.”).

20 There is nothing unique about Netgear or its lawsuit that warrants deviating
21 from the Ninth Circuit’s requirements. Nor should the Court permit Netgear to deny
22 Huawei the time provided in the Federal Rules to respond simply by refusing to send
23 Huawei a proper request for waiver. The Court should deny Netgear’s motion and
24 enter an order setting Huawei’s deadline to respond to Netgear’s Complaint for June
25 25, which is 90 days from the date Huawei offered in writing to waive service.

26 **II. FACTUAL BACKGROUND**

27 On January 31, 2024, Anna Lam, in-house counsel at Netgear, emailed Emil
28 Zhang, Head of Huawei’s European IPR Department, with a redacted copy of

1 Netgear’s complaint, asking “who NETGEAR’s United States counsel should contact
2 regarding this matter.” Dkt. 39-2, Ex. 3 at 9. Zhang asked Lam to clarify whether she
3 was “looking for someone to speak with regarding the lawsuit.” *Id.* at 8.

4 Lam responded and asked, “can Huawei agree to forego potential significant
5 expenses associated with formal service or efforts of alternative service by agreeing
6 to accept service in exchange for a 45 day extension on filing an Answer or otherwise
7 responding to the U.S. Complaint?” *Id.* at 7. She did not send Huawei a waiver
8 request under Rule 4(d) or explain why she was offering 45 days for a foreign
9 defendant to “accept service” – neither of which are provided for under the law.

10 Upon returning from his family vacation before and during the Chinese New
11 Year, Zhang responded by asking Lam to clarify what she meant by accept service:
12 “With respect to your question about whether Huawei will agree to accept service,
13 do you instead mean waive service?” *Id.* at 5–6. He also asked what Lam meant when
14 she indicated “alternative service has already been effectuated in the U.S. action” and
15 to explain “[w]hen and how [Netgear] believe[d] [it] served Huawei.” *Id.* at 6. Zhang
16 further explained that he is not “a U.S. lawyer [himself], and because Huawei has not
17 yet hired a U.S. law firm,” Zhang needed to know more about Netgear’s position. *Id.*

18 When Lam replied, she did not answer Zhang’s questions regarding
19 (1) whether Netgear was asking Huawei to waive service or (2) how “alternative
20 service has already been effectuated.” *Id.* at 4–5. She instead said: “[S]hould we not
21 hear from you before the end of this week we will move forward with asking the
22 Court to declare that service through alternative means is acceptable” *Id.* at 5.
23 Zhang replied, asking again whether Netgear sought a waiver of service. *Id.* at 4.

24 Lam again responded without clarifying whether she was requesting a waiver
25 of service. *See id.* at 2–3. And she did not send any of the required materials under
26 Rule 4(d). Instead, she asserted that “Huawei refuses to waive service and/or agree
27 to timely set a date to respond to the Complaint.” *Id.* at 3. Zhang responded by stating
28 that he disagreed with what Lam had described in the previous email and noting his

1 “unanswered questions.” *Id.* at 1. Seven days later and without replying to Zhang’s
2 email, Netgear filed its Motion for Order for Alternative Service. Dkt. 39.

3 In mid-March, Huawei retained Susman Godfrey as outside counsel. Susman
4 Godfrey reviewed Netgear’s filings and the parties’ correspondence. On March 26,
5 Kalpana Srinivasan, newly retained counsel for Huawei, contacted Blair Jacobs,
6 counsel for Netgear. She subsequently reached out by email on March 27, explaining
7 that Netgear’s “brief does not reflect the state of play between the parties based on
8 the very correspondence Netgear has cited”: the brief incorrectly states that Netgear
9 “‘asked HUAWEI to waive service of the Complaint,’ and that Huawei ‘refused.’”
10 Ex. 4. She also noted the Rule 4(d)(1) requirements for requesting waiver of service,
11 which had not been met, but stated that “Huawei is willing to waive service” under
12 Rule 4(d) with a proper request. *Id.* Outside counsel for the parties spoke on March
13 28. Netgear indicated that it wanted to rest on its Rule 4(f) motion notwithstanding
14 Huawei’s willingness to waive service. *See* Ex. 2 at 1 (referencing phone call).

15 To avoid burdening this Court, on April 1, Huawei emailed a signed waiver of
16 service dated March 27 to Netgear’s counsel indicating that, pursuant to Rule 4(d)(3),
17 Huawei’s deadline to answer or otherwise respond to Netgear’s complaint should be
18 June 25, 2024. *See* Ex. at 1, 2 at 1. Under that rule, a defendant has 90 days from the
19 date that the request for waiver was sent to them outside of any United States
20 jurisdiction to respond. Because Netgear never requested a waiver for service under
21 4(d), Huawei used the date when counsel for Huawei informed Netgear that Huawei
22 was willing to waive service (March 27) as the date from which the 90 days runs on
23 its signed waiver form. *See* Ex. 1, 4. Netgear to date has not filed the waiver with the
24 Court.

25 Mid-afternoon on April 5, the day of this filing, Netgear counsel informed
26 Huawei counsel that Netgear intends to pursue its motion notwithstanding Huawei’s
27 signed waiver of service. *See* Ex. 3 at 1–2. In its email, Netgear cited caselaw never
28 raised in its brief and from district courts outside of this Circuit for the proposition

1 that it need not request a waiver under Rule 4(d) in order to obtain alternative service.
2 *See id.* The only one of those cases to address alternative service is wholly inapposite
3 because it involved a defendant evading the plaintiff's service attempts, a situation
4 far different than this one. The other cases did not deal with alternative service at all.
5 *See infra*, p. 8.

6 Netgear's email conceded, contrary to the claim in its motion, that it never
7 requested a waiver of service under Rule 4(d) – which is the only means of waiver
8 provided under the Federal Rules. *See* Ex. 3 at 1. Netgear now contends that Huawei's
9 waiver was ineffective and Netgear can pursue alternative service – despite the
10 absence of any caselaw from this Circuit supporting that position and the clear lack
11 of necessity for alternative service under the circumstances given Huawei's signed
12 waiver of service.

13 **III. ARGUMENT**

14 **A. The Court should deny Netgear's motion as moot because** 15 **alternative service is not necessary.**

16 In the Ninth Circuit, a plaintiff seeking an order for alternative service must
17 show “that the facts and circumstances of the . . . case necessitate[] the district court's
18 intervention.” *Rio Props.*, 284 F.3d at 1016; *see also Kinsley Tech. Co. v.*
19 *AshleyDevice*, No. 2:22-cv-4803-ODW (KSx), 2022 WL 17184870, at *4 (C.D. Cal.
20 Oct. 19, 2022) (denying request for alternative service on foreign defendants because
21 the plaintiff “has not made adequate attempts to effectuate service through other
22 methods, and accordingly, the ‘particularities and necessities’ of this case do not
23 require alternative service of process” (citation omitted)); *Fourte Int'l Ltd. BVI v. Pin*
24 *Shine Indus. Co.*, No. 3:18-cv-297, 2018 WL 1757776, at *2 (S.D. Cal. Apr. 11, 2018)
25 (denying alternative service where circumstances did not “necessitate the Court's
26 intervention”).

27 Netgear has not attempted any form of service, and Huawei has agreed to
28 waiver of service. Alternative service is not necessary. Netgear cannot artificially

1 create necessity by ignoring Huawei's waiver. Yet that is exactly what it attempts to
2 do, burdening this Court with this motion in an effort to prevent Huawei from
3 receiving the 90 days to respond to which it is entitled pursuant to its properly
4 executed waiver. *See* Fed. R. Civ. P. 4(d)(3).

5 Far from seeking to evade service, Huawei has a consistent history of returning
6 service waivers to save the parties the expense of service. *See, e.g., VoIP-Pal.com,*
7 *Inc. v. Huawei Techs. Co.*, No. 3:23-cv-151, Dkt. 13 (N.D. Tex. Jan. 20, 2022)
8 (Huawei received 90 days to respond to complaint after waiving service); *Logantree*
9 *LP v. Huawei Techs. USA, Inc.*, No. 6:21-cv-119, Dkt. 9 (E.D. Tex. Apr. 29, 2021)
10 (same); *Rock Creek Networks, LLC v. Huawei Techs. Co.*, No. 6:21-cv-290, Dkt. 6
11 (W.D. Tex. May 21, 2021) (same); *WSOU Invs., LLC v. Huawei Techs. Co.*, No. 6:20-
12 cv-916, Dkt. 15 (W.D. Tex. Oct. 16, 2020) (same); *Longhorn HD LLC v. Huawei*
13 *Techs. Co.*, No. 2:19-cv-212, Dkt. 15 (E.D. Tex. Jul. 15, 2019) (same); *L3Harris*
14 *Techs. v. Huawei Device USA, Inc.*, No. 2:18-cv-439, Dkt. 16 (E.D. Tex. Feb. 15,
15 2019) (same); *Realtime Data LLC v. Huawei Techs. Co.*, No. 6:18-cv-182, Dkt. 11
16 (E.D. Tex. May 21, 2018) (same); *Diff Scale Operation Research, LLC v. Huawei*
17 *Techs. Co.*, No. 2:18-cv-062, Dkt. 10 (E.D. Tex. Mar. 28, 2018) (same). Likely aware
18 of this, Netgear acknowledges it could have asked Huawei to waive service but chose
19 not to do so.

20 That Huawei is not seeking to evade service of process underscores why
21 alternative service is unwarranted here. In *Rio Properties, Inc. v. Rio International*
22 *Interlink* – cited by Netgear – the Ninth Circuit affirmed the district court's grant of
23 a motion for alternative service after the plaintiff "presented the district court with its
24 inability to serve an elusive international defendant, striving to evade service of
25 process." 284 F.3d at 1012, 1016.

26 However, when a defendant is not striving to evade service, courts deny
27 motions for alternative service. *See Moldex Metric, Inc. v. Swedsafe AB*, No. 2:18-
28 cv-3502-JFW (AGRx), 2018 WL 6137578, at *2 (C.D. Cal. June 1, 2018) (denying

1 motion for alternative service where there was no evidence defendant was attempting
2 to evade service); *Methinx Ent., LLC v. Ent. Magpie Ltd.*, No. 2:21-cv-1049, 2021
3 WL 3510378, at *3–4 (W.D. Wash. Aug. 10, 2021) (denying motion for alternative
4 service where plaintiffs “fail[ed] to show an ‘inability to serve an elusive
5 international defendant, striving to evade service of process.’” (citation omitted));
6 *Fujitsu Ltd. v. Belkin Int’l, Inc.*, 782 F. Supp. 2d 868, 880–81 (N.D. Cal. 2011)
7 (denying motion for alternative service and distinguishing *Rio Properties* because
8 “[plaintiff] has not presented any facts to suggest that [defendants] are evading
9 service”); *Jimena v. UBS AG Bank*, No. 1:07-cv-367, 2010 WL 2465333, at *10, 12
10 (E.D. Cal. June 10, 2010) (denying motion for alternative service where the plaintiff
11 made no showing that the defendant was attempting to evade service of process);
12 *U.S. Aviation Underwriters, Inc. v. Nabtesco Corp.*, No. 2:07-cv-1221, 2007 WL
13 3012612, at *2 (W.D. Wash. Oct. 11, 2007) (denying motion for alternative service
14 and stating, “Plaintiff cites no reason why the methods specified by FED. R. CIV. P.
15 4(f)(1) and (2) would be ineffective, unlike *Rio Properties* where the defendant was
16 ‘elusive’ and ‘striving to evade service of process.’” (citation omitted)).

17 Although Netgear relies heavily on *FemtoMetrix, Inc. v. Huang*, No. 8:22-cv-
18 1624-CJC (KESx), 2023 WL 3564758 (C.D. Cal. Feb. 15, 2023), in that case the
19 “[d]efendants present[ed] as ‘elusive’ and ‘striving to evade service of process.’”
20 2023 WL 3564758, at *2 (citing *Rio Props.*, 284 F.3d at 1016). Here, Huawei was
21 not asked to waive service pursuant to Rule 4(d) but after seeing Netgear’s motion
22 provided a signed waiver to Netgear. See Ex. 2 at 1, 3. Alternative service is
23 unnecessary. Additionally, to the extent Netgear still claims as it did in
24 communications with Huawei, see Dkt. 39-2, Ex. 3 at 6, that Netgear has already
25 effectuated alternative service, that is incorrect. A plaintiff cannot effectuate
26 alternative service prior to a court’s order allowing alternative service. See
27 *Brockmeyer v. May*, 383 F.3d 798, 806 (9th Cir. 2004); *Solid Host, NL v. NameCheap,*
28 *Inc.*, No. 2:08-cv-5414-MMM (EX), 2009 WL 10671491, at *2 (C.D. Cal. Aug. 11,

1 2009) (“Rule 4(f)(3) does not permit a party to attempt alternative service without
2 court approval and then seek the court’s validation of its efforts after the fact . . .”).

3 Finally, none of the out-of-circuit cases Netgear cited to Huawei in Netgear’s
4 April 5 email correspondence (but never raised in its motion to this Court) supports
5 allowing alternative service here. *See* Ex. 3 at 1–2 (citing *Noble Sec., Inc. v. Ingamar*
6 *Co.*, No. 1:21-cv-1372, 2021 WL 2012508, at *2–3 (E.D.N.Y. May 20, 2021);
7 *Puzzangara v. Evans Assocs.*, No. 2:10-cv-76, 2011 WL 2273726, at *3 (E.D. Pa.
8 June 9, 2011); *Powell v. Carey Int’l, Inc.*, 548 F. Supp. 2d 1351, 1357–58 (S.D. Fla.
9 2008); *Budget Rent A Car Sys. Inc. v. Miles*, No. 2:04-cv-1205, 2005 WL 1106335,
10 at *3 (S.D. Ohio May 9, 2005)). In *Noble Security*, the court cited caselaw for the
11 proposition that a court’s intervention is necessary when a party appears to be evading
12 service and found that “Plaintiffs have reasonably attempted to effect service on
13 Defendant and that the Court’s intervention is necessary.” 2021 WL 2012508, at *5.
14 That is not what has transpired here. Netgear has not made any attempt to serve
15 Huawei, and Huawei is not evading service. Further, notwithstanding its grant of
16 alternative service, the *Noble* court granted a 90-day extension of time for the foreign
17 defendant to answer the complaint – the same time period that would have been
18 available under Rule 4(d) (and as the Court should order here). *Id.* at *7.

19 The courts’ decisions in *Puzzangara* and *Powell* are even further afield: these
20 cases dealt with disputes over attorneys’ fees and costs and say nothing about the
21 availability of alternative service under Rule 4(f). 2011 WL 2273726, at *3; 548 F.
22 Supp. 2d at 1356. And *Budget* addressed a defendant’s contention under Fed. R. Civ.
23 P. 12(b)(5) that the Court should dismiss a complaint for insufficiency of service of
24 process. 2005 WL 1106335, at *3. It, too, has no bearing on whether Netgear can
25 obtain alternative service. Huawei is not evading service and has in fact returned a
26 signed waiver, and thus this Court’s intervention is not necessary.

B. Netgear cannot use its desire for a faster schedule than that created by the Federal Rules as a basis for alternative service.

“[T]he desire for expedience and efficiency alone is not sufficient to justify alternative service.” *Amazon.com, Inc. v. Tian*, No. 2:21-cv-159, 2022 WL 486267, at *2 (W.D. Wash. Feb. 17, 2022); *see also Fourte Int’l*, 2018 WL 1757776, at *2 (denying alternative service where “Plaintiffs only argue[d] that the requested alternative methods of service are the most efficient and effective methods of service”); *U.S. Aviation Underwriters*, 2007 WL 3012612, at *2 (denying motion for alternative service where plaintiff sought “to use Rule 4(f)(3) simply because it ‘will be much faster, thus moving this case forward in an expeditious and cost-effective manner,’” than service through the Hague Convention (record citation omitted)). Given Huawei’s waiver of service under Rule 4(d), Netgear’s only basis for requesting alternative service is to shorten the time for Huawei to respond. That is not a legitimate basis for seeking the remedy of alternative service.

Here, Netgear did not seek waiver of service under Rule 4(d) or respond to Huawei’s questions regarding the same. As Netgear itself concedes, Netgear “*could have* requested that Huawei waive service of process, but Netgear chose not to.” Ex. 3 at 1. *See* Dkt. 39-2, Ex. 3. Any delay in service is not of Huawei’s making and cannot provide a basis for alternative service. *See Tevra Brands LLC v. Bayer Healthcare LLC*, No. 5:19-cv-4312, 2020 WL 3432700, at *5 (N.D. Cal. June 23, 2020) (denying motion for alternative service where delays in service through the Hague Convention were due to plaintiff’s errors or plaintiff’s vendor’s errors and stating that “[u]sing Rule 4(f)(3) because ‘it will be much faster . . . by itself is not sufficient justification for the Court to authorize service by alternative method” (citing *Jimena*, 2010 WL 2465333, at *10)).

1 **IV. CONCLUSION**

2 For the forgoing reasons, this Court should deny Netgear's motion for an order
3 for alternative service and should enter an order setting Huawei's deadline to respond
4 to Netgear's Complaint as June 25, 2024.

5 Dated: April 5, 2024

SUSMAN GODFREY L.L.P.

7 By: */s/ Kalpana Srinivasan*

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